



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Andrea Last v

**Doctor Nittin Kumar and Dr Meenu Kumar t/a
Hounslow Medical Centre**

Heard at: Watford (by CVP)

On: 12 and 13 July 2022 (hearing) and
30 September 2022 (deliberation)

Before: Employment Judge Alliot

Members: Ms Ann Crosby
Mr Jonathan Appleton

Appearances

For the Claimant: In person

For the Respondent: Dr Ahmad (counsel)

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim of race discrimination is well founded.

REASONS

Introduction

1. The claimant was employed by the respondent on 1 October 2018 as a Practice Manager. Although both pleadings state that the claimant's employment ceased on 1 December 2019, the evidenced before us was that she was handed her letter of dismissal on 29 November 2019 and, accordingly, we find that that was the effective date of termination of her contract of employment. The claimant was dismissed with immediate effect on 29 November 2019, the reason being given as gross misconduct, and she was paid three month's pay in lieu of notice. By a claim form presented on 9 March 2020, based on an early conciliation certificate of the same date, the claimant presents claims of direct race discrimination. The respondent defends the claims.

The issues

2. The issues were set out in a case management summary following a preliminary hearing heard before Employment Judge Hawksworth on 25 October 2021. They are as follows:-

“The Issues

39. The issues the Tribunal will decide are set out below.

1. Time limits

- 1.1. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
- 1.1.1 On what date did the claimant notify Acas for early conciliation?
 - 1.1.2 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.1.3 If not, was there conduct extending over a period?
 - 1.1.4 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.1.5 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.1.5.1 Why were the complaints not made to the Tribunal in time?
 - 1.1.5.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Direct race discrimination (Equality Act 2010 section 13)

- 2.1 The claimant describes her race as white. She says she was treated less favourably because she was not Indian.
- 2.2 Did the respondent do the following things:
- 2.2.1 Fail to invite the claimant to a team building trip to Prague in September 2019;
 - 2.2.2 Fail to support the claimant in relation to complaints made against Alka Thaker on 4 September 2019;
 - 2.2.3 Accuse the claimant of gross misconduct on 2 October 2019;
 - 2.2.4 Dismiss the claimant on 1 December 2019.
- 2.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The claimant says she was treated worse than:

- 2.3.1 Other members of the group who were invited to Prague and who are Indian;
- 2.3.2 Alka Thaker, a receptionist, who is Indian and who had complaints from staff and patients but was not the subject of disciplinary action;
- 2.3.3 Fahmeeda Kazi and Nabeela Baig, practice managers at other branches, who are Indian and who had not vaccinated any staff and were not subject to disciplinary action; and
- 2.3.4 Manik Gupta, a receptionist at another branch who is Indian and who was given the claimant's role after she left.

2.4 If so, was it because of race?

3. Remedy for discrimination

- 3.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 3.2 What financial losses has the discrimination caused the claimant?
- 3.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 3.4 If not, for what period of loss should the claimant be compensated?
- 3.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 3.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 3.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 3.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the respondent or the claimant unreasonably fail to comply with it? If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 3.9 Should interest be awarded? How much?"

The law

Time

- 3. As per the IDS Employment Law Handbook on Practice and Procedure:-

“While employment tribunals have a wide discretion to allow an extension of time under the “just and equitable” test in s.123, it does not necessarily follow that exercise of the discretion is a forgone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in *Robertson v Bexley Community Centre t/a Leisure Link* [2003] IRLR 434, CA, that when employment tribunals consider exercising the discretion under what is now s.123(1)(b) Equality Act, “there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.”

4. The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit.
5. In addition, Dr Ahmed made submissions on the law as follows:-

“In *British Coal Corporation v Keeble* [1997] IRLR 336, the Employment Appeal Tribunal indicated that the tribunal’s discretion is as wide as that of civil courts under s.33 of the Limitation Act 1980. Therefore, the tribunal can consider:

- The prejudice each party would suffer if the extension was refused;
- The length and reasons for delay;
- The extent to which the cogency of the evidence is likely to be affected by the delay;
- The extent to which the party sued had cooperated with any request for information;
- The promptness with which the claimant had acted once he knew of the possibility of taking action; and
- The steps taken by the claimant to obtain professional legal advice once he knew of the possibility of taking action.

Further, it is not necessary to take an all or nothing approach to continuing acts. The tribunal can decide that some act should be grouped into a continuing act, whilst others remain unconnected. The tribunal in *Lyfar v Brighton and Hove University Hospitals Trust* [2006] EWCA Civ 15 48, grouped the 17 alleged individual acts of discrimination to 4 continuing acts, only 1 of which was in time.”

Race discrimination

6. S.13 of the Equality Act 2010 provides as follows:-

“13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”.

7. S.136 of the Equality Act provides as follows-

“136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.”

8. As per the IDS Employment Law Handbook on Discrimination at Work:-

“Two stage approach. As succinctly put by Her Honour Judge Eady QC in *Fennell v Foot Anstey LLP* EAT 0290/15, “Although guidance as to how to approach the burden of proof has been provided by this and higher appellate courts, all judicial authority agrees that the wording of the statute remains the touchstone.”

9. In the case of Igen Ltd (formerly Leeds Careers Guidance) and others v Wong and other cases [2005] ICR 931, CA, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction (ie on the balance of probabilities) is the second stage engaged, where by the burden then “shifts” to the respondent to prove – again on the balance of probabilities – that the treatment in question was “in no sense whatever” on the protected ground.

10. Further, from the IDS Handbook:-

“Most cases turn on the accumulation of multiple findings of primary fact, from which the court or tribunal is invited to draw an inference of a discriminatory explanation of those facts”.

The evidence

11. We were provided with a hearing bundle running to 117 pages.
12. We had witness statements and heard evidence from the following:-
 - 12.1 The claimant.
 - 12.2 Dr Sajjad Ishaque, a GP at the respondent's Heart of Hounslow practice.
 - 12.3 Dr Nittin Kumar, a Partner/co-owner of the respondent.
 - 12.4 Mr Nadir Thaha, Business Manager for the respondent.
13. In addition we were provided with signed statements from three individuals, namely Ms Gemma Pyke, Ms Lynn Dalgleish, Ms Stephanie Franklin and

Ms Diana Tomasevska. We did not hear from these witnesses as the claimant had assumed that this hearing would be postponed. Notwithstanding their absence, the claimant indicated that she wanted to go on with the hearing and the respondent indicated that as far as the discrimination claims were concerned the contents of those statements was not really in dispute.

14. Lastly, we were provided with an email from the claimant to the Acas early conciliation timed at 11.47 on 25 October 2021.

Time

15. The EDT of the claimant's contract of employment is 29 November 2019. The dates of ACAS notification and the certificate are both 9 March 2020 and consequently no time stands to be added for Early Conciliation. The 3 month primary limitation period would therefore have expired on 28 February 2020. The claim was presented on 9 March 2020, 10 days late (2020 was a leap year).
16. We find that the first two matters of complaint in September 2019 are stand alone events that are unconnected. They involve different people and different types of alleged conduct – one being excluded from a work holiday / outing and the other a complaint about management conduct and don't on the face of it appear connected. They are accordingly both over 2 months out of time.
17. We find that the accusation of gross misconduct on 2 October 2019 was the first step in a course of action that culminated with the claimant's dismissal on 29 November 2019. As such we find that they constitute a course of conduct ending on 29 November 2019 and are, as stated, 10 days out of time.
18. The claimant told us that she was aware of the 3 month time limit for bringing a claim and in February 2020 she realised it was close and that she needed to do something. She said she had left the matter until then to give it some thought and accepted she could have acted earlier. She told us that she contacted ACAS in February 2020 and received an automated response. However, that response has not been produced in evidence before us. Clearly prompted by the PH on 25 October 2021, the claimant did email ACAS to try and obtain the relevant information on 25 October 2021. Whilst we have the claimant's email of that date we do not have any response.
19. We found the claimant to be a credible witness and, although she had no corroborating email that she had attempted to contact ACAS in February 2020, we accept that she did attempt to. Quite why she received an automated response is unknown – either she submitted it incorrectly or it was not properly accepted by ACAS. The probability is that it was the former.

20. In this case it is not a feature that the claimant is asserting that she was ignorant of the time limit. It is that she knew and attempted to comply with the correct procedure but probably made a mistake.
21. The length of the delay is short at 10 days. The cogency of the evidence will not be adversely affected. The respondent will not be prejudiced in any way in its ability to meet the case made. The reason for the failure to present the claim in time is human error – probably the claimant's but possibly at ACAS. Not extending time will deprive the claimant of her claim.
22. In all the circumstances, in our judgment it would be just and equitable to extend time for bringing her claims to 9 March 2020.

The facts

23. The respondent is a General Practice operator currently running five practices in and around the Greater London area. The respondent employs over 90 members of staff.
24. The claimant was employed by the Respondent as Practice Manager of the respondent's Feltham practice on 1 October 2018.
25. Right at the outset we observe that neither party has prepared this case with the thoroughness that might be expected and that there have been significant gaps in the evidence that we have had to deal with.
26. The claimant's claim was accompanied by a one page statement of her case. The witness statement that she has filed in this case is broadly similar but not identical to that statement.
27. In its initial response the respondent complained that the claimant's claim was insufficiently particularised.
28. No doubt in response to an order from the tribunal, the claimant provided further information concerning her claim on 27 January 2021. This sets out the four allegations of race discrimination that have been captured by Employment Judge Hawksworth in the list of issues. In particular, we note that when setting out the comparator relied upon in relation to being accused of gross misconduct on 2 October 2019, the claimant asserted that two other Practice Managers who were non-white had not vaccinated any staff and were not subject to disciplinary action. The respondent has therefore been on notice of that allegation since January 2021 and October 2021 at the latest.
29. It is the claimant's case that the Feltham branch was failing when she went to work there. She states that the practice slowly moved away from that position and great reviews started coming in. Thus it appears to us that the claimant initially worked well at the practice and had no issues with management.
30. In her claim form the claimant suggests that her relationship with the practice started to change in late summer 2019. She states:-

“My relationship with HMC started to change late summer, I was noticing things they were doing that I felt were questionable probably the best known is the failure to pay pensions, ever. Payslips indicated our pension payment was coming out of our salary but managers “invested it”. To this day two staff that have left Feltham and one staff member still working at Bedfont are still not paid for the past 16 months.

In the summer I was invited to attend a dinner, for the most part it was pleasant but there were difficult moments where I was spoken over in a language I did not understand.

Things got very hostile from there I asked Nittin why something was done at another branch but not in Feltham. He replied “I don’t have to explain myself to you or anyone else”. Around this time they started to question me, random incidents, some made up some they labelled gross misconduct....”

31. It is against that background of what appears to be a deteriorating relationship between the claimant and management that we have looked at the specific allegations of treatment we are dealing with.

32. The first relates to an allegation of failure to invite the claimant to a team building trip to Prague in September 2019. In both her claim form and in her witness statement the claimant puts it as follows:-

“Around this time Saj Ishaque, a GP colleague, asked me if I was going to Prague. He dubbed it a GP/Practice Manager weekend but I knew nothing about it.”

33. The first time this is referred to as being a “team building trip” is in the further particulars provided by the claimant on 27 January 2021.

34. The importance of the Prague trip in the claimant’s mind appears to have been prompted by the following, which is set out in her witness statement:-

“It was after this I discovered Manik Gupta, a receptionist from Hounslow, went to Prague and it was there his promotion to manager was discussed “over a few whiskeys” He now hold the position of Practice Manager in Feltham.”

35. It is the respondent’s case that the trip to Prague was not a team building exercise or a GP/Practice Manager weekend but was solely a group of work colleagues going on holiday together.

36. Doctor Ishaque told us that the Prague trip was his idea and that he decided who was going to go on it. Dr Ishaque was based at the Hounslow practice and told us that it was a group of friends going abroad at his expense. Six individuals went on this trip as follows:

- Dr Sajjad Ishaque, a GP at Hounslow.
- Mr Manik Gupta, support role/reception at Hounslow.
- Dr Vipin Patel, a GP at Hounslow.
- Ms Fahmeeda Kazi, Practice Manager at Bedfont.
- Ms Kushboo Ashraf, Administrator at Hounslow, and
- Mr Nadir Thaha, Business Manager across the whole business.

37. Dr Ishaque told us that he paid for all his friends to go on holiday. In support of this contention we have been provided with the email confirmations of the bookings for the flights. Five flights were booked on 6 August 2019 and Mr Thaha's flight was booked on 7 August 2019. The email confirmations indicate that the bookings were made by Ms Kushboo Ashraf using her personal email account. The confirmation of bookings document indicates that the prices were £924.45 and £255.22 for each of the bookings. It is not known how those sums were paid to Expedia. A redacted extract from Dr Ishaque's bank account has been placed before us which indicates payments to Expedia of £1,233.54 and £809.54 generated on 7 August 2019. No one could explain to us why those were in different sums and it appears to us that those entries are irrelevant to this case. No evidence has been placed before us as to how Dr Ishaque paid for the holidays. Both Dr Ishaque and Mr Thaha told us that he wanted to pay for his own holiday and we have been provided evidence of a transfer of £255.22 from Mr Thaha to Dr Ishaque on 14 October 2019.
38. Finally, we have a "To whom it may concern" letter dated 21 December 2021 from Mr Manik Gupta saying that the purpose of the trip was leisure only.
39. To an extent there is a straight conflict of evidence between the parties as to what happened. If the claimant is correct that Dr Ishaque asked her if she was going on the Prague trip, that would suggest that this was not a trip financed by himself at his own invitation.
40. On this issue we prefer the evidence of Dr Ishaque and Mr Thaha. It would appear the importance of the Prague trip only emerged later. As such, the claimant was recollecting events some time before. On her own case, she has got the description of the trip wrong at least once in that she initially described it as being a GP/Practice Manager trip whereas she has characterised it as "team building" elsewhere. Neither of the Partners/Co-owners were involved. The claimant suggested that Practice Managers should have gone on this trip. There was one other Practice Manager present from Bedfont. The claimant asserted there were only three practice managers and the other one was ill. The respondent asserted that there were five practice managers, one per practice. Apart from bare assertion very little evidence was placed before us on this issue. Taking into account the composition of the party, which overwhelmingly involved individuals from the Hounslow practice, we find that this was a social outing of work colleagues and not a "team building" outing or in any sense a formal GP/Practice Manager weekend. The payment by Mr Thaha to Dr Ishaque provides corroboration of him paying Dr Ishaque for his holiday rather than paying the practice.
41. Thus we find that as a matter of fact the claimant was not invited on the trip to Prague in September 2019. However, we find that this was not a team building trip and that the claimant had no expectation or right to be invited. It was a social event funded by Dr Ishaque. Accordingly, we find this alleged treatment not proved.

42. In any event, we do not find that this alleged treatment formed part of a connected series of events or course of conduct and consequently is out of time for the purposes of jurisdiction. We do not find that it would be just and equitable to extend time due to the length of the delay.
43. We now turn to consider the second allegation, namely “failing to support the claimant in relation to complaints made against Alka Thaker on 4 September 2019”.
44. We have had placed before us an email dated 4 Septemebr 2019 sent by the claimant to Mr Thaha. There is no message within this email as it contains an attachment titled “Meeting with AT 30 Aug”. We observe that if raising a confidential issue with senior management that is how one would expect the claimant to have raised the matter. In her further information the claimant stated:

“I requested input into the actions of a receptionist. An Indian lady (AT) has a number of complaints had been raised...

No action was taken against AT who actually calls herself “auntie”.

AT got away with a number of serious allegations from staff and patients while myself and other staff of another ethnic group have been severely reprimanded for much less”
45. The respondent has thus been on notice that the claimant was alleging that on 4 September 2019 she raised issues concerning Alka Thaker and was asserting that she had been ignored. Notwithstanding that the respondent was on notice of this allegation, it is notable that Mr Thaha in both his main and supplementary statements has not addressed it. The respondent has not provided disclosure of the attachment whilst seeking to maintain it did not contain a complaint. In our judgment that is unsatisfactory. In its amended response the respondent merely says that the claimant did not request any assistance and that had she done so the respondent would have received the same.
46. We find that the claimant did raise a complaint to Mr Thaha about how to deal with Ms Thaker. Mr Thaha has not taken the opportunity to explain to us what, if anything, he did in response to that email and the attachment and consequently we find that he ignored it. Consequently, we find that the respondent did fail to support the claimant in relation to complaints made against Alka Thaker on 4 September 2019.
47. However, we find that this did not form part of a connected series of events or a course of continuing conduct and that consequently this allegation is out of time for the purposes of jurisdiction. We do not find that it would be just and equitable to extend time due to the length of the delay.
48. We now turn to consider the circumstances of the claimant being accused of gross misconduct on 2 October 2019 and the connected act of being dismissed on 1 December 2019 (which we have actually determined was a dismissal on 29 November 2019).

49. The claimant was accused of gross misconduct on 2 October 2019 and the claimant was dismissed on 29 November 2019. Accordingly we find that the respondent did treat the claimant as alleged.
50. Consequently we have gone on to consider whether that was less favourable treatment.
51. At the disciplinary hearing on 2 October 2019 five items of alleged misconduct were made against the claimant. In the dismissal letter dated 28 November 2019 it is only the first of these, relating to a hepatitis B vaccination, that is referred to as gross misconduct. This allegation relates to the provision of hepatitis B vaccinations for administrative staff at the Feltham branch. The allegation was that on a date in around February 2019 the claimant had refused a request from Ms Thaker for a hepatitis B injection. We were told that a hepatitis B vaccination programme would involve more than one injection and it was unclear to us whether or not Ms Thaker had had a previous hepatitis B injection. Whether or not it was the first or a subsequent injection, the allegation was that the claimant had inappropriately refused it as Ms Thaker was administrative staff. We have not seen any of the primary information underlying this allegation, namely any form of written complaint from Ms Thaker or investigation notes. Dr Kumar told us that the information was relayed to him by Ms Thaker in a telephone call in February/March 2019. Given that Dr Kumar now asserts that this constituted gross misconduct, we find it very surprising that he neither requested Ms Thaker to put her complaint in writing nor took any action until shortly before the 2 October 2019 disciplinary hearing. No evidence was put before us by the respondent as to when any investigations began into the claimant's conduct.
52. The claimant's explanation was that she had not refused the vaccination to Ms Thaker but asked her to wait a week or two and that Ms Thaker agreed to this. The evidence was that by May 2019 Ms Thaker had had her Hep B vaccination. The reason the claimant asked Ms Thaker to wait was that she thought they were down to their last two vaccinations in the fridge and that it was important to keep a reserve ready should a patient need it. The respondent has asserted that there were nine vaccinations available and so could have been used. The untested evidence of Ms Price/Pyke supports the claimant's position that there were only two vaccinations available. We prefer the evidence of the claimant on this issue. Had this been a matter of gross misconduct in February/March when Dr Kumar was allegedly alerted to it then a timely investigation would have been able to verify how many vaccinations actually were available. Documentary proof of what vaccinations may or may not have been available is within the control of the respondent and no such evidence has been placed before us. We found the minutes of the disciplinary meeting placed before us to be a confusing document. There are entries in it in four different colours. The entries in black were the original notes but subsequent variations have been put in and no one could explain to us definitively by whom and when. Some of the entries appear contradictory and the claimant told us that she tried to alter them to reflect her recollection but eventually gave up and signed them

anyway. We have not placed a great deal of reliance on those minutes. In the face of what appears to us to be a reasonable explanation as to why Ms Thaker had not been vaccinated in February/March it does not appear that Dr Kumar or Mr Thaha made any further investigations with her as to whether that was correct.

53. The only explanation that Dr Kumar and Mr Thaha had for the delay between this alleged incident in February/March 2019 and instigating a disciplinary hearing against the claimant on 2 October 2019 was that it took time to investigate these things. We do not accept that an allegation of potential gross misconduct would take this long to investigate. Further, we question why, if it was potentially gross misconduct, the claimant was not suspended and investigated far earlier. Such an approach would probably have resulted in documentary evidence that could have been placed before us.
54. The second allegation of misconduct was refusing patients ACWY vaccinations and sending them elsewhere for them. This allegation is said to have been based on feedback from staff. The reason being, apparently, that they did not have the certificates to give to patients. The minutes record the claimant as saying she was not aware of this as a problem. The witness statement of Ms Pyke asserts that there was no reason to decline the vaccination to a patient as they had a document that served its purpose as a certificate as there was a space to put the sticker from the vaccination onto it.
55. The third allegation was failing to ensure that the fridge temperature was monitored by clinical and administrative staff twice a day. Again, this appears to have been based upon an allegation from unnamed administrative staff. Again, Ms Pyke's statement refers to staff not being told that the fridge temperatures should be monitored by clinical staff only. She refers to a reminder to admin staff on the screens on reception to undertake this task.
56. The fourth allegation is a lack of communication. There were two aspects to this allegation. The first concerned employing a new member of staff who subsequently went off to care for a dependent but was paid her full pay for a month. The member of staff returned for two days and then resigned. She was paid for the full month of August. The minutes record the claimant as apologising for not following protocols and it may be that an administrative error led to that employee receiving an extra months pay.
57. The second aspect of this allegation was that the claimant had applied for a job with an external consortium. The allegation was that this was in conflict with her contracted hours with the respondent. The claimant told us and we accept that when she began work for the respondent she was already a representative on the consortium. The role she applied for was Practice Lead at the consortium. The claimant told us and we accept that this was a role that did not conflict with her work for the respondent as it was 7.5 hours per week which could be done at the weekends and in the evenings.

58. The fifth allegation was of favouritism and discrimination. Again, three staff members are alleged to have raised concerns about the claimant's conduct. They asserted that the claimant did not provide the self-same help and support for some as she did for others. There is also a complaint that clinical staff had concerns about sending tasks to the claimant. We find that these allegations are general in the extreme and lack any form of particularity.
59. We find that the first allegation was 6 months old. We find the second part of the fourth allegation was clearly unsubstantiated. We find the first part of the fourth allegation was substantiated. We find all the other allegations were in very general terms and that the claimant provided credible explanations.
60. The principal allegation, as borne out by the finding of gross misconduct in the dismissal letter, relates to the failure to give Ms Thaker a hepatitis B vaccination in February/March 2019. The claimant relies on the comparators of Ms Kazi and Bey, Practice Managers at other branches, who she says had not vaccinated administrative staff but were not subject to any disciplinary action. The only evidence produced in rebuttal by the respondent has been Doctor Kumar saying that he instructed all branches to vaccinate all members of staff, including administrative staff. Save for that bare assertion, we have no evidence from the respondent as to whether or not hepatitis B vaccinations were given to administrative staff across all practices.
61. We have asked ourselves the question why the claimant was accused of gross misconduct on 2 October 2019. The claimant herself has pointed to a deterioration in her relationship with management from late summer onwards. Some of the reasons she has given do not appear to be related to her race, for example, the claimant raising issues concerning pensions and annoying Doctor Kumar by questioning his conduct. However, in our judgment shortly before 2 October 2019 Doctor Kumar probably decided that he wanted to terminate the claimant's contract and had gone out to find as much as possible that he could use in a disciplinary process against her. We do not accept Doctor Kumar's explanation for the delay between February/March and October 2019 in investigating the allegation of gross misconduct concerning the hepatitis B vaccination. The minutes of the disciplinary meeting on 2 October 2019 repeatedly refer to unknown members of staff raising issues against the claimant. That suggests to us that the respondent had gone out asking members of staff for any sort of information in order to justify the disciplinary process and the claimant's dismissal.
62. Further, there was a noticeable delay after 2 October 2019 disciplinary meeting until the claimant was dismissed on 29 November 2019. Doctor Kumar suggested that this was because of his ill health. We have had no corroboration that Doctor Kumar was ill at this time and the claimant stated to us that the reason she was kept on during that time was that Mr Gupta, who was going to replace her, was on leave. The respondents can provide no real information as to when Mr Gupta was on leave. Mr Thaha accepted that Mr Gupta had been in India for a month. In our judgment the only

explanation for the delay between the finding of gross misconduct and the dismissal of the claimant was to wait for Mr Gupta to come back from India to take over her role. The respondent sought to distinguish his role by giving it a different job title of Support Manager but we find that that there was no material difference. No job descriptions for Practice Manager and/or Support Manager have been placed before us to compare and contrast and, in any event, the respondents evidence was that each practice had to have a designated Practice Manager.

Conclusions

63. We find that Dr Kumar decided to dismiss the claimant and instigated a disciplinary process to achieve this. We find that in order to do this, in or about October 2019, he gathered as much information as he could to accuse the claimant of misconduct. We make this finding for the following reasons:
- The very significant delay in dealing with an allegation of gross misconduct from March 2019.
 - The very general nature of most allegations based on 'staff feedback'.
 - The range of differing allegations.
 - The relative triviality of some of the allegations.
 - The failure to evidence prior investigations and subsequent investigations in the light of the claimant's reasonable explanations.
 - The severity of the decision to dismiss in the circumstances.
64. We find that following the disciplinary hearing the claimant was not dismissed for nearly 2 months to allow Mr Gupta to return from leave to replace her. This clearly indicates to us that a decision to award the role to Mr Gupta had been taken in conjunction with the decision to terminate the claimant's employment.
65. We find that despite being clearly on notice that the claimant was asserting that other non-white practice managers had not offered Hepatitis B vaccinations to administrative staff and had not been disciplined, the respondent has failed to provide any evidence to the contrary.
66. We find that, in short, the respondent concocted disciplinary action against the claimant and replaced her with a non-white employee.
67. We find that that raises a prima facie case of race discrimination that requires an explanation from the respondent. We find that no satisfactory explanation has been provided. We find that the disciplinary process was a pretext.

68. In any event, we find that the appropriate comparators would be the non-white practice managers Fahmeeda Kazi and Nabeela Baig. The fact that they are not Indian but Bangladeshi and Pakistani does not affect the comparison. The Respondent has not established that the comparators did vaccinate all staff. The comparators were not disciplined. We find that the claimant was treated less favourably than them by being subjected to the disciplinary process and dismissed.
69. We find that the less favourable treatment of the claimant was because of her race.
70. Consequently, for the above reasons we find that the claimant's claim for race discrimination is well founded.
71. Obviously there will be a remedy hearing. Issues relating to contribution, Polkey, and compliance with the Acas Code of Conduct will be dealt with at that hearing.

Employment Judge Alliot

Date: 12 December 2022

Sent to the parties on: 20 December 22

For the Tribunal Office